

Farm chemicals include chemical products used in production agriculture, the products of which are to be sold, or in the production or care of animals that are to be sold or the products of which are to be sold. See 86 Ill. Adm. Code 130.1955. (This is a GIL).

July 17, 2000

Dear Xxxx:

This letter is in response to your letter dated June 12, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department, 2 Ill. Adm. Code 1200.120(b) and (c) (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>).

In your letter, you have stated and made inquiry as follows:

Could you tell me if there is any publication that actually lists what exactly is taxable, and what is not for production agriculture? I have recently opened a small business that sells animal health products. It would be similar to what veterinarians sell, or a farm supply store. I have gotten the basics figured out as far as products used only in the production of animals used for food are not charged sales tax. Are there any guidelines though as far as say like ear tags for animals? I am also in the process of setting up a web page and am wondering if there any laws that restrict the selling of certain items to other states? I know that there are some states out east that cannot buy syringes and needles without certificates of need from a veterinarian, but how do you find out which states? I would really appreciate any information you could give me ,or if you would know of another office I could contact for this information, please let me know at the above address. Thank you for your time.

In general, the sale of tangible personal property by persons in Illinois for use or consumption is subject to Retailers' Occupation Tax based upon the seller's gross receipts, unless the purchaser can document an exemption. Please refer to 35 ILCS 120/2.

Please be advised that if a pet store or other retail store sells tangible personal property at retail, the store would incur Retailers' Occupation Tax liability on such sales. This is true even if a veterinarian may prescribe a product. Examples are certain types of pet foods and flea powders.

We have enclosed 86 Ill. Adm. Code 130.305, the regulation covering the Illinois sales/use tax exemption afforded machinery and equipment used primarily

in production agriculture. Notwithstanding the fact that sales may be at retail, the Illinois Retailers Occupation Tax (i.e. sales tax) does not apply to sales of machinery and equipment used primarily in production agriculture or in State or Federal agricultural programs.

No item qualifies for the exemption in and of itself and no transaction is exempt unless the seller obtains a certification that contains the information required by Section 130.305(m). Machinery or equipment that is used both in qualifying and non-qualifying activities must be used primarily in a qualifying activity in order for the exemption to apply.

Production agriculture, with respect to crops, is limited to activities necessary in tilling the soil, planting, irrigating, cultivating, applying herbicide, insecticide, or fertilizer, harvesting and drying of crops. Activities such as the clearing of land, mowing of fence rows or ditches, or creation of ponds or drainage facilities are not included, nor are the operations involved in the storing or transporting of crops and produce, Section 130.305(f).

Machinery means major mechanical machines or major components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. Accessories or replacement parts not essential to the operation of the machinery itself, except when sold as an integral part of a qualified machine at time of purchase, generally do not qualify for the exemption.

Equipment means any independent device or apparatus separate from any machinery, but essential to production agriculture. Generally, ear tags used primarily on animals that will subsequently be sold, or whose products will be sold, qualify for the farm machinery and equipment exemption.

Please see the enclosed copy of 86 Ill. Adm. Code 130.1955, the regulation that explains the exemption afforded farm chemicals. In general, farm chemicals include chemical products used in production agriculture, the products of which are to be sold, or in the production or care of animals that are to be sold or the products of which are to be sold.

This exemption is more restricted than it may appear. For example, chemicals such as animal disinfectants can only qualify for the exemption if they are applied directly to livestock, either externally or internally.

The Illinois Department of Revenue does not have authority to advise about the legality of the sales of certain items in other states. One may obtain this information from such other states. Please note the Illinois Department of Revenue's Web site, address below, contains links to Other State's Tax Sites, and many of these sites have links to that state's administrative agencies.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk

Enc.